IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL Nos.389 & 390 of 2000

Rajnarayana Hosiery Exports Pvt.,Ltd.,
rep. By its Director N,.Thiyagarajan
No.72 Race Course Road, Coimbatore-18 ..Appellant/complainant in both appeals

-vs-

1. Thiruppathi Knitt Fabrics
A Partnership Firm
Cotton Hosiery Exporters
Adhi Prasakthi Kovil Street,
M.P.Nagar, Kongu Nagar Extension
Tiruppur-636 607

2. Mr.P.Padmanabhan,Partner
Thiruppathi Knitt Fabrics
A Partnership Firm
Cotton Hosiery Exporters
Adhi Prasakthi Kovil Street,
M.P.Nagar, Kongu Nagar Extension
Tiruppur-636 607

3. Mrs. Kamallammal, Partner
Thiruppathi Knitt Fabrics
A Partnership Firm
Cotton Hosiery Exporters
Adhi Prasakthi Kovil Street,
M.P.Nagar, Kongu Nagar Extension
Tiruppur-636 607 .. Respondents/accused in both appeals.

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These appeals are filed under Sec. 378(4) of Cr.P.C. agains
the Judgment made in S.T.C.Nos.2664 of 1997 and 2665 of 19
respectively dated 20.04.2000 on the file of the Court of Judici
Magistrate No.V,Coimbatore.

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For appellant : Mr.A.Natarajan,
Senior Counsel
for Mr.C.P.Palanisamy

For respondents : Mr.C.Ravichandran

JUDGMENT

These appeals arise out of the Judgment in S.T.C.No.2664 a 2665 of 1997 respectively on the file of the Court of the Judici Magistrate No V, Coimbatore dated 20.4.2000. The complainant is t appellant in both the appeals.

2. The short facts relevant for the purpose of deciding the appeals are as follows:
The first accused is a partnership firm. The second accused and t third accused are its partners. The second accused, at the time, wh the offence was committed, was in charge and responsible to the fi for the conduct at the business of the firm. The complainant supplie knitted fabrics worth Rs.6,00,000/- to the first accused firm credit. The first accused manufactured 13140 pieces of Batik T-Shir and entrusted the same with the complainant company to export to the client who are placed at Germany. The understanding between t parties that they have collected the sale proceeds and permit t complainant company to take knitted fabrics for the value Rs.6,00,000/- and in this regard an agreement has been entered in between the parties on 10.4.1994 in fact to indemnify for the lo incurred in this deal of export of the Batik-T.Shirt. M/s Fashion Po failed to pay the bills, the value of the shirts exported to the they could not be realised. So the second accused on behalf of t first accused firm in order to indemnify the loss incurred by t complainant's company issued six cheques on different dates.

3. The complainant presented the cheques 1 to 4 for encashme through Punjab National Bank, the cheques were returned unpaid "d to insufficient funds" on 8.3.1997. The cheque NO.5 was presented f encashment on 8.3.1997 through the same Bank and it was also return unpaid "due to insufficient funds" on 11.3.1997. The complainant caus a registered lawyer's notice to the accused on 22.3.1997 but the sa notices were returned unserved. Hence the complaint.

4. The sworn statement was taken from the complainant and t learned Judicial Magistrate returned the original complaint filed the complainant with an endorsement that under Section 219 Cr.P.C., t complaint is not maintainable. There was no time specified in t return for re-presentation. Subsequently, the complainant came forwa with two fresh complaints and the same was taken on file by t learned Judicial Magistrate in S.T.C.NO.2664 of 1997 and 2665 of 19 respectively.

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5. In S.T.C.No.2664 of 1997, P.Ws 1 and 2 were examined and Exs P1 to P4 were marked. On the side of the accused, neither oral nor documentary evidence was let in. In S.T.C.No. 2665/1997,P.Ws1 and 2 were examined and Exs P1 to P4 were marked. The accused has not let in any evidence .

6.After going through the oral and documentary evidence available the learned Judicial Magistrate has dismissed the complaints on the ground that they are barred by limitation. Hence the complainant is before this Court.

7. Now the point for consideration in these appeals is whether the judgment in S.T.C.No.2664/1997 and 2665/1997 respectively on the file of the Court of Judicial Magistrate No.V, Coimbatore are liable to be set aside for the reasons stated in the respective memorandum of appeals?

8.I heard Mr.A.Natarajan, learned Senior Counsel appearing for the appellant/complainant and Mr.C.Ravichandran, learned counsel appearing for the respondents/accused and considered their rival submissions.

9. The Point:
The learned Senior Counsel appearing for the appellant relying on Manjula-v- M/s Colgate Palmolive(India) Limited, represented by its authorised signatory T.Harikumar(2006-2.L.W.(Crl.851) and contended that in view of Section 219 of the Code of Criminal Procedure, the complainant cannot re-present the earlier complaint returned by the Judicial Magistrate with five cheques. That is why the complainant has presented two fresh complaints along with the old complaint and that since there was no time specified in the return of the original complaint by the learned Judicial Magistrate , the second complaint preferred along with the original complaint by the complainant is not barred by limitation.

10. The short facts of the abovesaid ratio are as follows:
The complainant had filed a complaint along with 16 dishonoured cheques drawn by the accused in favour of the complainant , wherein a Division Bench of this Court has held that an offence committed by the same person in respect of 16 cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc.and Section 219 (1) Cr.P.C. permits joinder of all charges provided they are offences of the same kind, the number of transactions and the cheques issued prior to the issuance of the statutory notice under Section 138(b) of the Negotiable Instruments Act could at best be considered as bundle of facts giving rise to a cause of action. But as far as the case on hand is concerned, the complainant has re-presented one complaint with three cheques with the original returned complaint

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He has filed a separate complaint in respect of the two other cheques As far as the second new complaint in respect of two cheques concerned, it is clearly barred by limitation because that was no presented with the original complaint. In the second complaint, th complainant has stated at paragraph 5 that as per the return of th original complaint dated 12.5.1997, he has filed two separat complaints along with the new complaint as well as the former complain dated 26.4.1997 also(The correct date is 23.4.1997) and furthe specifically stated that the former complaint may be read as part an parcel of the new complaint.

11 The learned Magistrate has dismissed both the complaints on th ground that notice of intimation was given to the accused on 25.3.19 and as per Section 138(a) of Negotiable Instrumentns Act, within si months from the date of intimation regarding the dishonour of th cheque to the accused, the complaint must be preferred . But th complaint was filed only on 23.4.1997 which was returned on 29.4.199 But two fresh complaints ought to have been filed on or before 9.5.19 but since they were filed only on 4.9.1997, the complaints are barre by limitation. But I am of the view that since the complaint i S.T.C.No.2664 of 1997 along with three cheques was filed along with th original complaint, which was returned without any specific date fo re-presentation, the complaint is in time.

12. As far as the second complaint filed in S.T.C.No.2665 of 19 is concerned, two cheques are clearly barred by limitation since the were not filed along with original complaint.

13. The learned counsel appearing for the respondents/accuse relying on M.A. Abdul Khuthoos-v-Ganesh and Coy Oil Mills(1999 C L.J.2432) and contended that if a returned complaint is re-presen beyond the time stipulated in the returned complaint, it cannot be sai that the complaint was filed in time. The facts of the said dictum i that the accused had issued two cheques one dated 29.9.1995 fo Rs.25,703/- and another dated 4.10.1995 for a sum of Rs.26,078/- discharge the liability of the complainant and on presentation both th cheques were dishonoured on 13.3.1996. After issuing the statutor notice contemplated under law, the complainant filed a complain against the accused on 25.4.1996 for the offence under Section 138 o the Negotiable Instruments Act. When the complaint was presented, th learned Judicial Magistrate, Gudiyatham found that there was n signature by the complainant in the said complaint. So on the sam date, it was returned with an endorsement that the petitioner signature is not obtained in the complaint and the complaint wa returned on 25.4.1996. Later it was returned on 15.5.1996. On the sam date, sworn statement was taken by the learned Judicial Magistrate fro the complainant. The case was taken on file and coming to know tha the complaint was presented without signature of the complaint o 25.4.1996 and thereafter it was represented with the signature of th

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complaint on 15.5.1996, the petitioner has moved this Court to qua the proceedings mainly on the ground that the cognizance taken in th case is invalid one, in view of the fact that the complaint w entertained beyond the period of limitation as contemplated und Section 142 of Negotiable Instruments Act. Accepting the case of t accused, the learned Judge of this Court has quashed the proceedings the ground that the complaint was time barred. The only ground on whi the complaint in that case was held to be invalid is that t complainant has failed to sign in the complaint even on the first da of the presentation of the complaint. But it is not the case herein. facts of the said ratio decidendi will not be applicable to the prese facts of this case.

14. It is pertinent to note in this case that the learned Judici Magistrate has clearly observed at paragraph 20 of his Judgment th he is not dealt with the other points regarding the merits of the ca since he has held that the prosecution is barred by limiation. In vi of my observation made earlier, I am of the considered view th Crl.A.No.389 of 2000 is liable to be allowed in respect of thr cheques since the complaint was filed along with the earlier complai which was returned without any date specifying for re-presentati and it is also necessary in case of this nature, a finding as whether an offence under Section 138 of the Negotiable Instruments A has been made out or not against the accused. Under such circumstance Crl.A.No.389 of 2000 is allowed and the Judgment in S.T.C.No.2664 1997 is set aside and the matter is remanded to the trial Court with direction to give finding in respect of all issues on merits and bo parties are at liberty to let in further evidence. Crl.A.No.390 of 20 is dismissed confirming the Judgment in S.T.C.No.2665/1997on the fi of the Court of Judicial Magistrate No.V, Coimbatore.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1. The Judicial Magistrae No.V
Coimbatore.

Through: The Chief Judicial Magistrate,
Coimbatore.

2 CCS TO MR.C.P. PALICHAMY, ADVOCATE SR NO 7900, 7901

2 CCS TO MR.C. RAVICHANDRAN, ADVOCATE SR 7753, 7754

Crl.A.Nos. 389 & 390/2000

MS(CO)

BP/20.2

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